

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CURTIS B. FISHER,

Petitioner,

v.

RON HAYNES,

Respondent.

CASE NO. C15-5747BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 27), and Petitioner Curtis Fisher’s (“Fisher”) objections to the R&R (Dkt. 29).

On July 18, 2016, Judge Creatura issued the R&R recommending that the Court dismiss Fisher’s petition as time-barred and deny issuing a certificate of appealability. Dkt. 27. On August 10, 2016, Fisher filed objections. Dkt. 29.

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, the Court agrees with Judge Creatura's conclusion that Fisher's
2 petition is time-barred. With regard to Fisher's grounds for relief based on a procedural
3 error under state law and a grossly disproportionate sentence, these claims should have
4 brought within one year from the date of the finality of his conviction. Fisher did not
5 bring these claims within the proper time frame, and the claims are time-barred. Fisher is
6 also not entitled to either statutory or equitable tolling.

7 With regard to Fisher's argument that *Miller v. Alabama*, 132 S. Ct. 2455 (2012),
8 and *Montgomery v. Louisiana*, 135 S. Ct. 1546 (2015), apply to his sentence, Fisher is
9 wrong. These cases apply to juveniles that received sentences of life without the
10 possibility of parole. Fisher, however, received a sentence of life with the possibility of
11 parole and is not entitled to any relief under these cases.

12 Therefore, the Court having considered the R&R, Fisher's objections, and the
13 remaining record, does hereby find and order as follows:

- 14 (1) The R&R is **ADOPTED**;
- 15 (2) Fisher's petition is **DISMISSED** as time-barred;
- 16 (3) A certificate of appealability is **DENIED**;
- 17 (4) The Clerk shall close this case.

18 Dated this 30th day of September, 2016.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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